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STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

MD BUILDERS,

Respondent.

CASE NO. OSH 2008-10

ORDER NO. 294

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board (Board) by conference call on September 9, 2008, and attended by J. Gerard Lam, Deputy Attorney General, for Complainant, and Dean Martin, for Respondent by telephone, IT IS HEREBY ORDERED THAT:

1. The issues to be determined at trial are as follows:
 - a. Whether Citation 1, Item 2a, including the characterization as "Serious" and the associated penalty of \$1,500.00, resulting from Inspection No. 311432744, was valid and proper.

Citation 1, Item 2a alleged:

29 CFR 1926.304(d) was violated because:

A Mikita Miter saw was missing the retractable blade guard. The lack of the guard exposed the employees operating the saw to serious injuries due to struck-by hazards.

- b. Whether Citation 1, Item 2b, including the characterization as "Serious" resulting from Inspection No. 311432744, was valid and proper.

Citation 1, Item 2b alleged:

29 CFR 1926.304(f) was violated because:

A Delta Unisaw X5 table saw was not equipped with a spreader and anti-kickback device. The lack of spreader and anti-kickback device exposed the operators of the saw to serious injuries from struck-by hazards.

- c. Whether Citation 1, Item 2c, including the characterization as "Serious", resulting from Inspection No. 311432744, was valid and proper.

Citation 1, Item 2c alleged:

29 CFR 1926.304(i)(1) was violated because:

A Delta Unisaw X5 was not equipped with a blade guard. The lack of a blade guard exposed the operators of the table saw to serious injuries due to struck-by hazards.

- d. Whether Citation 1, Item 3a, including the characterization as "Serious" and the associated penalty of \$375.00, resulting from Inspection No. 311432744, was valid and proper.

Citation 1, Item 3a alleged:

29 CFR 1926.404(f)(6) was violated because:

Two 3-wire extension cords were missing the ground pins on the attachment plugs. The lack of grounding exposed the employees to serious injuries due to electrical hazards.

- e. Whether Citation 1, Item 3b, including the characterization as "Serious", resulting from Inspection No. 311432744, was valid and proper.

Citation 1, Item 3b alleged:

29 CFR 1926.405(a)(2)(ii)(I) was violated because:

A 3-wire flexible extension cord was not protected from damage due to vehicular traffic. A tire of a vehicle on the site was resting on top of the extension cord. The lack of protection exposed employees to serious injuries due to electrical hazards.

- f. Whether Citation 1, Item 3c, including the characterization as "Serious", resulting from Inspection No. 311432744, was valid and proper.

Citation 1, Item 3c alleged:

29 CFR 1926.405(g)(2)(iii) was violated because:

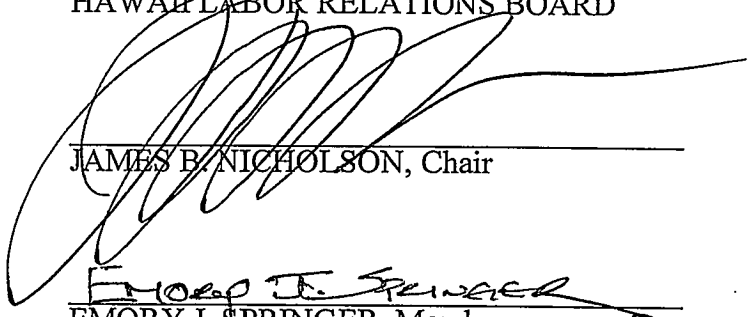
A 3-wire yellow flexible extension cord and a one foot section of smaller gauge orange flexible cord were spliced together. The splicing exposed employees using the cord to power equipment to serious injuries from electrical hazards.

2. The deadline for filing of the parties' final naming of witnesses is **November 5, 2008**. Each party shall file with the Board the original and four copies of its list of witnesses it plans to call at trial, along with the witnesses' addresses and brief summary of expected subject of their testimony, with a certificate of service to the other party, by this date. Each party shall also exchange any expert witness reports by this date.
3. The discovery cutoff date is **December 5, 2008**. All other discovery and information requests, including depositions and document requests, must be completed by this date.
4. Trial in this matter is scheduled for **January 6, 2009 at 9:00 a.m.**, in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The trial will continue from day-to-day until completed.
5. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.


DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. MD
BUILDERS
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DATED: Honolulu, Hawaii, September 10, 2008.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

J. Gerard Lam, Deputy Attorney General
Dean Martin